

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 419

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Introduced by Senator Block

February 21, 2013

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An act to amend ~~Section 3454~~ of Sections 1203.2 of, and to add Section 1203.35 to, the Penal Code, relating to ~~postrelease community supervision~~ supervised persons.

LEGISLATIVE COUNSEL'S DIGEST

SB 419, as amended, Block. ~~Postrelease community supervision; flash incarceration. Supervised persons: flash incarceration.~~

(1) Existing law authorizes a probation officer, parole officer, or peace officer, at any time during the period of supervision of a person released on probation, conditional sentence, summary probation, or mandatory supervision, or when that person is subject to revocation of postrelease community supervision or revocation of parole supervision, to, without warrant or other process and at any time until the final disposition of the case, rearrest the supervised person and bring him or her before the court or the court may, in its discretion, issue a warrant for that person's rearrest. Existing law additionally authorizes, upon rearrest or upon the issuance of a warrant for rearrest, the court to revoke and terminate the supervision of the person if the interests of justice so require and the court, in its judgment, has reason to believe that the person has, among other things, violated any of the conditions of his or her supervision. Existing law specifies that nothing in those provisions affects the authority of the supervising agency to impose intermediate sanctions, including flash incarceration, to persons supervised on parole or postrelease community supervision, as specified.

*This bill would specify that nothing in the above provisions affects the authority of the supervising agency to impose intermediate sanctions, including flash incarceration, not only to persons supervised on parole or postrelease community supervision, as specified, but also to persons on probation or mandatory supervision.*

*(2) Existing law requires postrelease community supervision to include specified conditions, including, among other things, that the person obey all laws and waive any right to a court hearing prior to the imposition of a period of flash incarceration in a county jail of not more than 10 consecutive days for any violation of his or her postrelease supervision conditions. Existing law permits each county agency responsible for postrelease supervision to determine additional specified appropriate conditions of supervision consistent with public safety, including the use of continuous electronic monitoring, and flash incarceration in a county jail. Existing law encourages periods of flash incarceration as one method of punishment for violations of an offender's condition of postrelease supervision.*

*This bill would require, prior to the imposition of a period of flash incarceration in a county jail of not more than 10 consecutive days for any violation of a person's conditions of probation or mandatory supervision, that he or she waive any right to a court hearing. This bill would also permit each county agency responsible for probation or mandatory supervision to determine additional appropriate conditions of supervision consistent with public safety, including the use of continuous electronic monitoring, appropriate rehabilitation and treatment services, appropriate incentives, and appropriate responses to alleged violations, which may include, among other things, flash incarceration in a county jail. This bill would encourage periods of flash incarceration, as defined, as one method of punishment for violations of an offender's condition of probation or mandatory supervision.*

~~Under existing law, the Postrelease Community Supervision Act of 2011, certain felons, upon release from prison, are subject to community supervision. Existing law requires that each supervising county agency, as established by the county's board of supervisors, establish a review process for assessing and refining a person's program of postrelease supervision and imposes specified requirements that additional postrelease supervision conditions are required to meet. Additionally, existing law permits each county agency responsible for postrelease supervision to determine additional appropriate conditions of~~

~~supervision, and also to determine and order appropriate responses to alleged violations, including, among other things, flash incarceration in a county jail.~~

~~This bill would make technical, nonsubstantive changes to the latter provision.~~

Vote: majority. Appropriation: no. Fiscal committee: no.

State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1203.2 of the Penal Code is amended to  
2     read:

3     1203.2. (a) At any time during the period of supervision of a  
4     person (1) released on probation under the care of a probation  
5     officer pursuant to this chapter, (2) released on conditional sentence  
6     or summary probation not under the care of a probation officer,  
7     (3) placed on mandatory supervision pursuant to subparagraph (B)  
8     of paragraph (5) of subdivision (h) of Section 1170, (4) subject to  
9     revocation of postrelease community supervision pursuant to  
10    Section 3455, or (5) subject to revocation of parole supervision  
11    pursuant to Section 3000.08, if any probation officer, parole officer,  
12    or peace officer has probable cause to believe that the supervised  
13    person is violating any term or condition of his or her supervision,  
14    the officer may, without warrant or other process and at any time  
15    until the final disposition of the case, rearrest the supervised person  
16    and bring him or her before the court or the court may, in its  
17    discretion, issue a warrant for his or her rearrest. Upon such  
18    rearrest, or upon the issuance of a warrant for rearrest the court  
19    may revoke and terminate the supervision of the person if the  
20    interests of justice so require and the court, in its judgment, has  
21    reason to believe from the report of the probation or parole officer  
22    or otherwise that the person has violated any of the conditions of  
23    his or her supervision, has become abandoned to improper  
24    associates or a vicious life, or has subsequently committed other  
25    offenses, regardless whether he or she has been prosecuted for  
26    such offenses. However, the court shall not terminate parole  
27    pursuant to this section. Supervision shall not be revoked for failure  
28    of a person to make restitution imposed as a condition of  
29    supervision unless the court determines that the defendant has  
30    willfully failed to pay and has the ability to pay. Restitution shall

1 be consistent with a person's ability to pay. The revocation,  
2 summary or otherwise, shall serve to toll the running of the period  
3 of supervision.

4 (b) (1) Upon its own motion or upon the petition of the  
5 supervised person, the probation or parole officer or the district  
6 attorney of the county in which the person is supervised, the court  
7 may modify, revoke, or terminate supervision of the person  
8 pursuant to this subdivision, except that the court shall not  
9 terminate parole pursuant to this section. A person supervised on  
10 parole or postrelease community supervision pursuant to Section  
11 3455 may not petition the court pursuant to this section for early  
12 release from supervision, and a petition under this section shall  
13 not be filed solely for the purpose of modifying parole. Nothing  
14 in this section shall prohibit the court from modifying parole when  
15 acting on its own motion or a petition to revoke parole. The court  
16 shall give notice of its motion, and the probation or parole officer  
17 or the district attorney shall give notice of his or her petition to the  
18 supervised person, his or her attorney of record, and the district  
19 attorney or the probation or parole officer, as the case may be. The  
20 supervised person shall give notice of his or her petition to the  
21 probation or parole officer and notice of any motion or petition  
22 shall be given to the district attorney in all cases. The court shall  
23 refer its motion or the petition to the probation or parole officer.  
24 After the receipt of a written report from the probation or parole  
25 officer, the court shall read and consider the report and either its  
26 motion or the petition and may modify, revoke, or terminate the  
27 supervision of the supervised person upon the grounds set forth in  
28 subdivision (a) if the interests of justice so require.

29 (2) The notice required by this subdivision may be given to the  
30 supervised person upon his or her first court appearance in the  
31 proceeding. Upon the agreement by the supervised person in  
32 writing to the specific terms of a modification or termination of a  
33 specific term of supervision, any requirement that the supervised  
34 person make a personal appearance in court for the purpose of a  
35 modification or termination shall be waived. Prior to the  
36 modification or termination and waiver of appearance, the  
37 supervised person shall be informed of his or her right to consult  
38 with counsel, and if indigent the right to secure court appointed  
39 counsel. If the supervised person waives his or her right to counsel  
40 a written waiver shall be required. If the supervised person consults

1 with counsel and thereafter agrees to a modification, revocation,  
2 or termination of the term of supervision and waiver of personal  
3 appearance, the agreement shall be signed by counsel showing  
4 approval for the modification or termination and waiver.

5 (c) Upon any revocation and termination of probation the court  
6 may, if the sentence has been suspended, pronounce judgment for  
7 any time within the longest period for which the person might have  
8 been sentenced. However, if the judgment has been pronounced  
9 and the execution thereof has been suspended, the court may revoke  
10 the suspension and order that the judgment shall be in full force  
11 and effect. In either case, the person shall be delivered over to the  
12 proper officer to serve his or her sentence, less any credits herein  
13 provided for.

14 (d) In any case of revocation and termination of probation,  
15 including, but not limited to, cases in which the judgment has been  
16 pronounced and the execution thereof has been suspended, upon  
17 the revocation and termination, the court may, in lieu of any other  
18 sentence, commit the person to the Department of Corrections and  
19 Rehabilitation, Division of Juvenile Facilities if he or she is  
20 otherwise eligible for such commitment.

21 (e) If probation has been revoked before the judgment has been  
22 pronounced, the order revoking probation may be set aside for  
23 good cause upon motion made before pronouncement of judgment.  
24 If probation has been revoked after the judgment has been  
25 pronounced, the judgment and the order which revoked the  
26 probation may be set aside for good cause within 30 days after the  
27 court has notice that the execution of the sentence has commenced.  
28 If an order setting aside the judgment, the revocation of probation,  
29 or both is made after the expiration of the probationary period, the  
30 court may again place the person on probation for that period and  
31 with those terms and conditions as it could have done immediately  
32 following conviction.

33 (f) As used in this section, the following definitions shall apply:

34 (1) "Court" means a judge, magistrate, or revocation hearing  
35 officer described in Section 71622.5 of the Government Code.

36 (2) "Probation officer" means a probation officer as described  
37 in Section 1203 or an officer of the agency designated by the board  
38 of supervisors of a county to implement postrelease community  
39 supervision pursuant to Section 3451.

(3) “Supervised person” means a person who satisfies any of the following:

(A) He or she is released on probation subject to the supervision of a probation officer.

(B) He or she is released on conditional sentence or summary probation not under the care of a probation officer.

(C) He or she is subject to mandatory supervision pursuant to subparagraph (B) of paragraph (5) of subdivision (h) of Section 1170.

(D) He or she is subject to revocation of postrelease community supervision pursuant to Section 3455.

(E) He or she is subject to revocation of parole pursuant to Section 3000.08.

(g) Nothing in this section affects the authority of the supervising agency to impose intermediate sanctions, including flash incarceration, to persons supervised on parole pursuant to Section ~~3000.8~~ 3008.08, probation, mandatory supervision, or postrelease community supervision pursuant to Part 3 (commencing with Section 3450) of Title 2.05.

*SEC. 2. Section 1203.35 is added to the Penal Code, immediately following Section 1203.3, to read:*

*1203.35. (a) A person subject to probation or mandatory supervision shall waive any right to a court hearing prior to the imposition of a period of flash incarceration in a county jail of not more than 10 consecutive days for any violation of his or her conditions of probation or mandatory supervision.*

*(b) Each county agency responsible for probation or mandatory supervision may determine and order additional appropriate conditions of supervision consistent with public safety, including the use of continuous electronic monitoring as defined in Section 1210.7, appropriate rehabilitation and treatment services, appropriate incentives, and appropriate responses to alleged violations, including, but not limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court pursuant to Section 3015, or flash incarceration in a county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender’s condition of probation or mandatory supervision.*

*(c) For purposes of this chapter, “flash incarceration” is a period of detention in the county jail due to a violation of an*

offender's conditions of probation or mandatory supervision. The length of the detention period may range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for probation or mandatory supervision. Shorter, but if necessary more frequent, periods of detention for violations of an offender's probation or mandatory supervision shall appropriately punish an offender while preventing the disruption in a work or home establishment that typically arises from longer term revocations.

SECTION 1. ~~Section 3454 of the Penal Code is amended to read:~~

~~3454. (a) Each supervising county agency, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, shall establish a review process for assessing and refining a person's program of postrelease supervision. Any additional postrelease supervision conditions shall be reasonably related to the underlying offense for which the offender spent time in prison, or to the offender's risk of recidivism, and the offender's criminal history, and be otherwise consistent with law.~~

~~(b) Each county agency responsible for postrelease supervision, as established by the county board of supervisors pursuant to subdivision (a) of Section 3451, may determine additional appropriate conditions of supervision listed in Section 3453 consistent with public safety, including the use of continuous electronic monitoring as defined in Section 1210.7, order the provision of appropriate rehabilitation and treatment services, determine appropriate incentives, and determine and order appropriate responses to alleged violations that may include, but shall not be limited to, immediate, structured, and intermediate sanctions up to and including referral to a reentry court pursuant to Section 3015, or flash incarceration in a county jail. Periods of flash incarceration are encouraged as one method of punishment for violations of an offender's condition of postrelease supervision.~~

~~(c) "Flash incarceration" is a period of detention in county jail due to a violation of an offender's conditions of postrelease supervision. The length of the detention period can range between one and 10 consecutive days. Flash incarceration is a tool that may be used by each county agency responsible for postrelease supervision. Shorter, but if necessary more frequent, periods of detention for violations of an offender's postrelease supervision~~

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